



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 202

[Docket No. 2018-13]

Architectural Works

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is amending its regulations pertaining to the registration of architectural works. To improve the efficiency of the registration process, and encourage broader participation in the registration system, the final rule will require applicants to submit their claims using an online application, rather than a paper application. Applicants will be required to provide a date of construction, but only if the work was embodied in unpublished plans or drawings on or before December 1, 1990 and if the work was constructed before January 1, 2003. And, applicants will be encouraged – but not required – to upload a digital copy of their architectural works through the electronic registration system, instead of submitting a physical copy.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice; Erik Bertin, Deputy Director of Registration Policy and Practice; Jordana Rubel, Assistant General Counsel by telephone at 202-707-8040 or by email at rkas@copyright.gov, ebertin@copyright.gov, and jrubel@copyright.gov.

SUPPLEMENTARY INFORMATION: On December 26, 2018, the Copyright Office published a notice of proposed rule making (“NPRM”) setting forth proposed amendments to the regulations governing the registration of architectural works. 83 FR 66182 (Dec. 26, 2018). The Office received comments from three individuals who generally supported the proposal.¹ Having reviewed and carefully considered these comments, the Office is issuing a final rule that is identical to the rule proposed in the NPRM.

The final rule requires applicants to submit their claims through the electronic registration system using the Standard Application, in lieu of a paper form.² The rule states that applicants must provide a date of construction, but only if the architectural work was embodied in unpublished plans created prior to December 1, 1990 and if the building was constructed before January 1, 2003. The rule amends the deposit requirements by allowing applicants to submit drawings and photographs of an architectural work in any form that allows the Office to access, perceive, and examine the entire copyrightable content of the work, including by uploading the deposit through the electronic registration system in an acceptable file format. Finally, the rule confirms that architectural works are classified as “works of the visual arts” for purposes of registration, and it makes some technical amendments that will improve the organization and readability of the regulations.

¹ All of the comments submitted in response to the NPRM can be found on the Copyright Office’s website at <https://www.copyright.gov/rulemaking/architecturalworks/>.

² The Office recently issued a final rule confirming that the Standard Application may be used to register any work under sections 408(a) and 409 of the Copyright Act, including an architectural work. At the same time, the Office confirmed that architectural works may not be registered with the Single Application, which is a streamlined version of the electronic application. 37 CFR 202.3(b)(2)(i)(A), (B). To avoid potential confusion between the Single and Standard Applications, today’s final rule removes the word “single” wherever it appears in 37 CFR 202.11.

The commenters generally supported the online filing requirement and agreed that it will improve the efficiency of the registration process. One individual expressed concern that applicants may be accustomed to using paper forms and may need time to adapt to this change. Another noted that some applicants may not have access to computers, and encouraged the Office to “allow certain exceptions” for such persons.³

The final rule provides the requested flexibility. When the rule goes into effect, applicants will be required to use the online application to register an architectural work. Paper applications submitted on Form VA will not be accepted. However, the Office will have the authority to waive the online filing requirement in “an exceptional case” and “subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.” Applicants who do not have a computer or internet access may contact the Office, and the Office will review the specific details of their situation to determine if a waiver is warranted.

The commenters generally supported the proposal to allow for digital uploads in lieu of physical copies, though one individual suggested that digital submissions should be mandatory rather than permissive. Sections 407 and 408 of the Copyright Act give the Register of Copyrights broad authority to issue regulations concerning the specific nature of the copies that must be submitted for purposes of registration and mandatory deposit.⁴ Architectural works are typically created with computer software, and as noted in the NPRM, the Office expects that most applicants will submit their deposits in electronic form. That said, the Office recognizes that architectural works may be created electronically and then published in a physical form. And the Office recognizes that some

³ Comments of Reema Mahmoud and Nik Zou.

⁴ 17 U.S.C. 408(c)(1).

digital files may be so big that it may not be possible to upload them to the electronic registration system.⁵

For these reasons, the final rule gives architects the option to register their works either by uploading a digital deposit to the electronic system or by filing an electronic application and mailing the deposit to the Office in a physical form. But if the applicant chooses to submit a digital deposit, that file will be accepted solely for the purpose of registering the architectural work under section 408. Digital deposits will not satisfy the mandatory deposit requirement under section 407. In other words, if an architectural work has been registered with a digital deposit, the Office may issue a demand for a copy of “the most finished form of presentation drawings” if that work has been published in the United States and if the Library of Congress determines that the published work is needed for its collections.⁶

List of Subjects in 37 CFR Part 202

Copyright.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office is amending 37 CFR part 202 as follows:

PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 408(f), 702.

⁵ The current limit is 500 MB for each file that is uploaded to the electronic system. *See Compendium* § 1508.1.

⁶ 37 CFR 202.19(d)(2)(viii) (specifying the nature of the deposit required for purposes of mandatory deposit).

2. In § 202.3, add a sentence at the end of paragraph (b)(1)(iii) to read as follows:

§ 202.3 Registration of copyright.

* * * *

(b) * * *

(1) * * *

(iii) * * * This class also includes published and unpublished architectural works.

* * * *

3. Amend § 202.11 as follows:

- a. Revise paragraphs (a) and (b)(1) and (2);
- b. Remove paragraph (c)(2) and redesignate paragraph (c)(5) as paragraph (c)(2);
- c. Revise paragraphs (c)(3) and (4); and
- d. Add new paragraph (c)(5).

The revisions and additions read as follows:

§ 202.11 Architectural works.

(a) *General.* This section prescribes rules pertaining to the registration of architectural works.

(b) * * *

(1) For the purposes of this section, the term *building* means humanly habitable structures that are intended to be both permanent and stationary, such as houses and office buildings, and other permanent and stationary structures designed for human occupancy, including but not limited to churches, museums, gazebos, and garden pavilions.

(2) Unless otherwise specified, all other terms have the meanings set forth in §§ 202.3 and 202.20.

(c) * * *

(3) *Registration limited to one architectural work.* For published and unpublished architectural works, an application may cover only one architectural work. Multiple architectural works may not be registered using one application. For works such as tract housing, one house model constitutes one work, including all accompanying floor plan options, elevations, and styles that are applicable to that particular model. Where dual copyright claims exist in technical drawings and the architectural work depicted in the drawings, any claims with respect to the technical drawings and architectural work must be registered separately.

(4) *Online application.* (i) The applicant must complete and submit the Standard Application. The application should identify the title of the building. If the architectural work was embodied in unpublished plans or drawings on or before December 1, 1990, and if the building was constructed before January 1, 2003, the application should also provide the date that the construction was completed.

(ii) In an exceptional case, the Copyright Office may waive the online filing requirement set forth in paragraph (c)(4)(i) of this section, subject to such conditions as the Associate Register and Director of the Office of Registration Policy and Practice may impose on the applicant.

(5) *Deposit requirements.* (i) For designs of constructed or unconstructed buildings, the applicant must submit one complete copy in visually perceptible form of the most finished form of an architectural drawing showing the overall form of the building (*i.e.*,

exterior elevations of the building when viewed from the front, rear, and sides), and any interior arrangements of spaces and/or design elements in which copyright is claimed (*i.e.*, walls or other permanent structures that divide the interior into separate rooms and spaces). The deposit should disclose the name(s) of the architect(s) and draftsman(s) and the building site, if known. For designs of constructed buildings, the applicant also must submit identifying material in the form of photographs complying with §202.21, which clearly show several exterior and interior views of the architectural work being registered.

(ii) The deposit may be submitted in any form that allows the Copyright Office to access, perceive, and examine the entire copyrightable content of the work being registered, including by uploading the complete copy and identifying material in an acceptable file format to the Office's electronic registration system. Deposits uploaded to the electronic registration system will be considered solely for the purpose of registration under section 408 of title 17 of the United States Code, and will not satisfy the mandatory deposit requirement under section 407 of title 17 of the United States Code.

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4. Amend § 202.20 as follows:

- a. Add paragraph (c)(2)(i)(M); and
- b. Remove and reserve paragraph (c)(2)(xviii).

The addition reads as follows:

§ 202.20 Deposit of copies and phonorecords for copyright registration.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(M) Architectural works, for which the deposit must comply with the requirements set forth in §202.11.

* * * * *

Dated: April 5, 2019.

Karyn A. Temple,
Register of Copyrights and
Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,
Librarian of Congress.

[BILLING CODE 1410-30-P]

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